

US Serial No. 10/561749  
Page 5 of 10

Remarks:

*Regarding the rejection of claims 1-8, and 10 - 15 under 35 USC 103(a) in view of US 4670916 to Bloom (hereinafter simply "Bloom"), in view of GB 2329399 to Lhoste (hereinafter simply "Lhoste"), and WO 03/042462 to Bariou (hereinafter simply "Bariou"):*

The applicant traverses the Examiner's rejection of the claims in view of the combined references of Bloom, Lhoste and Bariou.

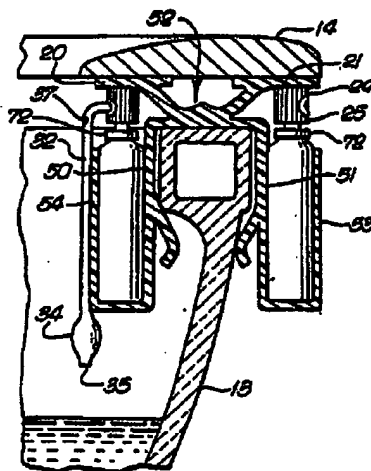
The applicant traverses the Examiner's rejection of the claims in view of the Bloom reference as modified by Lhoste or Bariou as the Examiner suggests.

Notwithstanding the remarks presented by the Examiner at pag2 of the Office Action, wherein the Examiner suggests that the consideration of Lhoste and/or Bariou would suggest the modifications to Bloom which the Examiner asserts would be "obvious", the applicant wholly disagrees. The Examiner states that "These modifications would neither destroy the intended purpose of Bloom nor hindsight reconstruction since the teaching of separation between the fragrance and disinfectant dispensing system, one being inside the toilet bowl and one being on the outside of the toilet bowl, is already taught by Bloom." The applicant traverses the Examiner's characterization of the supposed teaching of Bloom and how it would render the currently claimed invention as being "obvious".

Prior to discussing this point, the applicant respectfully reminds the Examiner that in determining the differences between the prior art and the claims, the question under 35 USC §103 is not whether the differences themselves would have been obvious, but rather, whether the claimed invention as a whole would have been obvious. A prior art reference must be considered in its entirety, as a whole, including portions that would lead away from the claimed invention. (See MPEP, at §2143.02.)

US Serial No. 10/561749  
Page 6 of 10

Turning now to Bloom, any artisan considering Bloom would recognize from the outset that Bloom's device relies wholly upon two pressurized canisters, one of which dispenses a treatment composition to the interior of a toilet bowl, the other of which dispenses a second treatment composition to the air outside of the toilet bowl. It is clear from Bloom's specification that device is operative only in an "active" mode, namely when the actuators of the pressurized dispensers are compressed by the weight of a someone pressing upon the toilet seat (14) which in turn forces elements 20, 21 to activate the valves of the pressurized canisters which only then, dispenses their compositions. Such is exemplified by the following figure from Bloom:



As is further visible from our review therefrom however, Bloom's article fails to provide any passive mode of operation which is provided by the applicant's invention, particularly with respect to the dispensing of the fragrancing composition. Bloom then should be understood and interpreted for only what it actually shows and discloses; any further reading goes beyond the ambit of the actual disclosure provided by the Bloom reference. Thus, skilled artisan, properly reviewing the Bloom reference would understand that any modification of his device, would detract from the proper functioning of his dispensing device which requires at least one, preferably a plurality of pressurized aerosol canisters, which function to release their contents only in a response to pressure

US Serial No. 10/561749  
Page 7 of 10

and actuation of their respective valves. This requires a somewhat complicated mechanical arrangement which would ensure that in the absence of a suitable amount of pressure that, the actuators would it not be operated while at the same time, would be suitably activated when a person is sitting upon the toilet bowl. Perhaps more importantly are also the substantially limited benefits when treating a lavatory appliance such as a toilet bowl as depicted by Bloom as such only occurs when a person is sitting upon a toilet bowl part furthermore, Bloom fails to provide an arrangement whereby the water in the upper tank or cistern of the lavatory appliance (see claims 11 – 15) can provide both simultaneous treatment of the water contained within the cistern, and treatment on the ambient environment of the cistern. Such would simply not be possible with the Bloom device. Thus, is the applicant's view that the examiner's proposed modification of Bloom would defeat its principles of operation, and thus does not provide a proper basis for its consideration it alone, with the later references to Lhoste and Bariou.

The applicant also reminds the Examiner that "hindsight reconstruction" of the claimed invention is impermissible as well.. A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher." See also *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot

US Serial No. 10/561749  
Page 8 of 10

use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987).

The applicant remains of the position that the Examiner’s reliance upon the later references of Lhoste and Bariou are at best, an impermissible hindsight reconstruction of the applicants presently claimed invention. The Examiner is reminded that in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

“It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987). The Examiner is also reminded that it is also well settled law that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

The Examiner’s proposed modification of Bloom far exceeds the scope of what actually shows and teaches; essential to the successful operation of the device of the Bloom reference is at least one sealed pressurized canisters as an essential part of his device. The removal of Bloom’s pressurized canister from his device would defeat the operating principles of Bloom’s device, and as specifically taught by Bloom. It is a further feature

US Serial No. 10/561749  
Page 9 of 10

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evident from Bloom that a metering dispensing valve is provided on each of his pressurized canisters as only a specific dosage of a composition is dispensed, but only when a user is present and pressure is applied to the top of the toilet seat. Again, such teaches that only periodic and active dosing of both Bloom's composition in response to the actuation of the valves of the aerosol canisters present. The Examiner's proposed modifications of Bloom to include the purported teachings of the Lhoste and Bloom references would just require a not insubstantial modification of Bloom's device and furthermore, such modification would defeat the design and essential operative elements of the Bloom device. Such would thus not render the applicants currently claimed invention is being obvious.

Accordingly, reconsideration of and withdrawal of the rejection of the claim is solicited.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

#### PETITION FOR A ONE-MONTH EXTENSION OF TIME

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

#### CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, including any extension of time fees, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

US Serial No. 10/561749  
Page 10 of 10

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Respectfully Submitted;

Andrew N. Parfomak

16 Nov. 2010

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Enclosure: Request for Continued Examination

CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and all attachments thereto is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

Andrew N. Parfomak

16 Nov. 2010

Andrew N. Parfomak

Date:

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